

CC:IT&A:TR-45-1273-90

Br2:KALaCour

FEB 28 1991

Regional Technical Coordinator  
Central Region

Assistant Chief Counsel (Income Tax & Accounting)

Technical Coordination Report 17,833

In the subject TCR, Ms. Sara Moomaw states that we should consider excluding deductions attributable to activities not engaged in for profit from the 2-percent floor. Ms. Moomaw provides an example to demonstrate why the interplay of sections 183 and 67 of the Internal Revenue Code may put a taxpayer in an "artificial profit" status. She believes that the interplay of the two Code sections may put a taxpayer in a position of being taxed as if the taxpayer actually had a profit from an activity not engaged in for profit. She believes that this is inequitable and difficult for taxpayers to comprehend.

Section 67(a) of the Code provides that miscellaneous itemized deductions may only be deducted "below the line" to the extent such expenses exceed 2-percent of the taxpayer's adjusted gross income. The term "miscellaneous itemized deductions" means the itemized deductions other than the deductions specifically listed in section 67(b). Section 67(b) does not include the deductions allowable under section 183.

Section 1.67-1T(a)(iv) of the Temporary Income Tax Regulations provides that expenses for an activity for which a deduction is otherwise allowable under section 183 of the Code are subject to the 2-percent floor.

Section 183(a) of the Code provides, in general, that if an activity is not engaged in for profit, no deduction attributable to such activity shall be allowed except as provided in section 183. Sections 183(b)(1) provides that in the case of an activity not engaged in for profit, the deductions that would be allowable without regard to whether the activity is engaged in for profit shall be allowed.

We believe the underlying premise of section 183 of the Code is that all relevant Code sections containing exceptions or limitations to the allowability of these deductions remain fully applicable. Therefore, section 67(b) remains applicable. Thus, deductions allowable under section 183 are allowed to the extent they exceed 2-percent of adjusted gross income for taxable years beginning after 1986.

008848

Regional Technical Coordinator, Central Region

Although we appreciate Ms. Moomaw's concerns, we would not recommend any change in the regulations at this time. Further, after a careful review of the legislative history of the applicable Code sections, we do not feel that proposed legislation is necessary.

We appreciate Ms. Moomaw's interest and initiative in submitting her report. Copies of this memorandum are attached for the Regional Technical Coordinator, Ms. Moomaw, and other interested persons.

(signed) Robert A. Berkovsky

By \_\_\_\_\_

Robert A. Berkovsky

Chief, Branch 2

Attachment:

As stated(3)